

The Service will no longer contend that contributions to or on behalf of organizations described in section 527(e) of the Code are transfers subject to the gift tax, irrespective of when the transfers were made.

ISSUE

What are the gift tax consequences of contributions made before May 8, 1974, to political organizations described in section 527(e)(1) of the Internal Revenue Code?

FACTS

In 1972 D made a contribution of \$10,000 in cash to a political committee to elect a particular candidate to state office. The committee met the definition of section 527(e)(1) of the Code, as now in force.

LAW AND ANALYSIS

Under section 2501(a)(5) of the Code, the federal gift tax is not imposed on the transfer of money or other property to a political organization within the meaning of section 527(e)(1) for the use of such organization. Pub. L. No. 93-625, section 14(b), 1975-1 C.B. 510, 517, provides that section 2501(a)(5) is effective with respect to transfers made after May 7, 1974.

Section 527(e)(1) and (2) of the Code, effective for taxable years beginning after December 31, 1974, states:

(1) Political organization.--The term 'political organization' means a party committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function.

(2) Exempt function.--The term 'exempt function' means the function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed.

Carson v. Commissioner, 71 T.C. 252 (1978), acq. in result page 5, this Bulletin, 641 F.2d 864 (10th Cir. 1981), held that the gift tax did not apply to amounts contributed to the campaign funds of candidates for certain political offices and to amounts expended directly on their behalf in 1967 through 1971. Stern v. United States, 436 F.2d 1327 (5th Cir. 1971), reached a similar

conclusion as to election campaign contributions made in 1959 through 1961. The contributions involved in both the Carson and Stern decisions were made to or on behalf of organizations of the type described in section 527(e)(1) of the Code . In the Carson case, the courts rejected the government's contention that the Congressional enactment of section 2501(a)(5) of the Code represented a change from the law applicable to transfers made prior to the effective date of that provision.

In view of these decisions, the Service will no longer contend that contributions to or on behalf of organizations that are described in section 527(e)(1) of the Code are transfers subject to the gift tax, irrespective of when the contributions were made.

In the instant case, D's \$10,000 contributions was to a committee described in section 527(e)(1) of the Code. Accordingly, gift tax liability will not be asserted.

However, the Service's acquiescence in the result in the Carson decision should not be interpreted as an acceptance of the rationale of either the Tax Court or the Court of Appeals. The Service continues to maintain that gratuitous transfers to persons other than organizations described in section 527(e) of the Code are subject to the gift tax absent any specific statute to the contrary, even though the transfers may be motivated by a desire to advance the donor's own social, political or charitable goals.

See, for example, section 2522(a) which limits the charitable gift tax deduction otherwise available for transfers to charitable organizations to only those organizations that have not been disqualified for exemption under section 501(c)(3) by reason of attempting to influence legislation and that do not participate in political campaigns.

HOLDING

The Service will no longer contend that the gift tax applies to contributions made before May 8, 1974, to or on behalf of a political organization described in section 527(e)(1) of the Code.